IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 28TH NOVEMBER, 2007 / 7TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 3772 of 2007(B)

CRL.APPEAL NO. 141/2004 of SESSIONS COURT, PALAKKAD.
C.C.NO. 3/2003 of CHIEF JUDICIAL MAGISTRATE, PALAKKAD.

REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED:

SABEER, S/O. ABDUL SAMMAD,
AGED 21 YEARS, PUTHANKADU, NEAR ARAVUSALA,
NOORANI POST, PALAKKAD.

BY ADV. SRI.SAJITH KUMAR V.

RESPONDENTS: RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. C.M. NAZAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL.R.P. NO. 3772 OF 2007

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Dated this the 28th day of November, 2007.

ORDER

The revision petitioner, who was the 1st accused in C.C. No. 3/2003 on the file of the Chief Judicial Magistrate, Palakkad for offences punishable under Sections 457 and 380 r/w Section 34 of the Indian Penal Code, challenges the conviction entered and sentence passed against him by the courts below concurrently for the said offences.

2. The case of the prosecution can be summarised as follows:

The three accused persons in furtherance of their common intention to commit theft from the residential building No. 35/228 owned by PW1 criminally trespassed into the said building at about 4 a.m. on 15.11.2002 after bending the iron bars of the ventilator. Thereafter, they entered the bedroom of PW1 and removed a gold chain weighing 6.300 grams worn by the two year old child of PW1. They also removed the silver anklet weighing 16 grms. worn by PW2 on her left leg and also removed

one pair of silver anklet weighing 29.500 grams worn by the daughter of PW1. The accused have thereby committed offences punishable under Sections 457 and 380 r/w Section 34 IPC.

3. On the side of the prosecution seven witnesses were examined as PWs 1 to 7 and six documents were marked as Exts.P1 to P6 and three material objects were also marked as MOs 1 to 3.

4. Since the 3rd accused was absconding, the case against him was split up and A1 and A2 alone stood trial before the Chief Judicial Magistrate, Palakkad.

5. After the close of the prosecution evidence, accused Nos. 1 and 2 were questioned under Section 313(1)(b) Cr.P.C with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence. They did not adduce any defence evidence when called upon to do so.

6. The learned Magistrate after trial, as per judgment dated 19.02.2004, found accused Nos. 1 and 2 guilty of the offences and sentenced them to rigorous imprisonment for two years each

and to pay a fine of Rs.500/- each and on default to pay the fine, to suffer simple imprisonment for 15 days both under Sections 457 and 380 IPC. Even though A1 and A2 filed separate appeals before the Sessions Court, Palakkad as Crl.Appeal Nos. 141 and 181 of 2004, the learned First Additional Sessions Judge as per common judgment dated 11.08.2006 dismissed the appeals confirming the conviction entered and the sentence passed against the revision petitioner (A1) and A2. Hence, this revision by A1.

7. Even though the learned counsel appearing for the revision petitioner assailed the conviction against him on various grounds,in as much as the conviction has been recorded concurrently after a careful evaluation of the oral and documentary evidence in the case, this court court sitting in revision will be loath to dislodge the said conviction. I do not find any infirmity in the appreciation of evidence by the courts below. Apart from the credible evidence of PWs 1 and 2 with regard to the theft committed during the dead of the night, there is the recovery evidence at the instance of the revision petitioner falling

under Section 27 of the Evidence Act. I find no reason to interfere with the conviction recorded against the revision petitioner.

8. What now survives for consideration is the adequacy or otherwise of the sentence imposed on the revision petitioner. The antecedents of the revision petitioner was enquired through the Public Prosecutor. He submitted that the revision petitioner is the accused in seven other cases of which five pertain to offences punishable under Section 380 IPC and that he is a habitual offender. Under these circumstances, I see little scope to interfere with the sentence imposed on the revision petitioner as well. The sentence is commensurate with the offence as also with the proclivities of the revision petitioner.

In the result, this revision is dismissed confirming the conviction entered and the sentence passed against the revision petitioner.

V. RAMKUMAR, JUDGE.

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